

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7780

BILL NUMBER: HB 1007

NOTE PREPARED: Feb 25, 2005

BILL AMENDED: Feb 24, 2005

SUBJECT: False Claims and Whistleblower Protection.

FIRST AUTHOR: Rep. Bosma

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill permits a person to bring a civil action on behalf of the state to recover money owed to the state due to the filing of a false claim. The bill also allows the Attorney General (AG) to intervene in a civil action concerning a false claim and allows the Inspector General (IG) to intervene if the AG is disqualified from intervening or elects not to intervene.

This bill provides that the person initiating the civil action is entitled to from 10% to 25% of the proceeds recovered in the action if the AG or the IG intervenes, and from 25% to 30% if the AG or IG does not intervene. The bill also permits the AG and the IG to issue a civil investigative demand in an action involving a false claim and establishes procedures for the issuance of civil investigative demands.

This bill provides enhanced relief for a whistleblower who has been retaliated against by an employer for assisting in an investigation concerning a false claim. It also makes other changes.

Effective Date: July 1, 2005.

Explanation of State Expenditures: This bill will have an administrative cost impact on the AG and the IG. [Note: The political office of Inspector General currently does not exist in statute.] The ultimate impact of this legislation will depend upon the number of actions filed as a result of the statutory changes referenced below.

Reporting a Violation: This bill changes the procedure for state employees to report violations by other state employees. Current law states that an employee may report violations in writing to their supervisor, or if the supervisor is also the violator, then to the State Ethics Commission (SEC). This bill requires that these reports

be made to the supervisor or otherwise the IG. This provision is expected to cause a shift in administrative costs from the SEC to the IG. The SEC had an average budget of \$243,810 from FY 2001 to FY 2004.

False Claims Against the State: This bill creates a new civil cause of action against persons who knowingly or intentionally:

- (1) present a false claim to the state for payment or approval;
- (2) make or use a false record or statement to obtain payment or approval of a false claim from the state;
- (3) with intent to defraud the state, deliver less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
- (4) with intent to defraud the state, authorize issuance of a receipt without knowing that the information on the receipt is true;
- (5) receive public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
- (6) make or use a false record or statement to avoid an obligation to pay or transmit property to the state;
- (7) conspire with another person to perform an act described in subdivisions (1) through (6); or,
- (8) cause or induce another person to perform an act described in subdivisions (1) through (6).

(These provisions do not apply to claims concerning Income Tax under IC 6-3.)

The impact of this provision will ultimately depend upon the number of actions that are filed as a result. Any administrative cost increase will be incurred by both the AG and IG. The AG and IG have concurrent jurisdiction over these actions. The AG may bring, or intervene in, an action involving a violation listed above. If the AG is disqualified from bringing the action, then the IG may bring or intervene in the action. Therefore, depending on the number of actions filed, the administrative cost impact could be significant.

This bill also provides that a person found liable for a listed violation is liable for the costs to the AG or IG in bringing the action. This provision will help to alleviate the administrative cost impact on both the AG and IG.

Whistleblower Protection: This provision of the bill states that the person who initially files the complaint is entitled to a portion of the proceeds of the action if the state prevails. This provision will not have any impact on expenditures of the state. As explained in more detail below, this provision will impact the revenues collected by the state, if the state prevails.

Explanation of State Revenues: *Reporting a Violation:* Current law provides that an employer may not dismiss, decrease the salary of, transfer, deny a promotion to, or demote an employee who reports a violation. This bill changes the penalty for violating this provision from a Class A infraction to a Class A misdemeanor.

By changing the penalty to a Class A misdemeanor, this bill potentially increases revenue to the Common School Fund, but could reduce revenue that is deposited in the state General Fund. This is because fines from misdemeanors are deposited in the Common School Fund, while infraction judgements are deposited in the state General Fund. Currently, the maximum judgment for a Class A infraction is \$10,000, which is deposited into the state General Fund, while the maximum fine for a Class A misdemeanor is \$5,000, which is deposited into the Common School Fund.

Besides the issuance of fines, the sentencing court may assess a court fee if a guilty verdict is entered. The court fee for an infraction is \$70, while the court fee for a misdemeanor is \$120. The state receives 70% of the court fee that is assessed when a guilty verdict is entered and the fee is collected in a court of record and 55% if a case is filed in a city or town court.

False Claims: In creating this new cause of action, this bill also creates a new penalty structure. If found liable in this civil action for a false claim against the state, the following penalties attach:

- (1) the person is liable to the state for a civil penalty of at least \$5,000; and,
- (2) is liable for up to three times the amount of the damages sustained by the state; and,
- (3) is liable for the costs to the AG or IG in bringing the action.

Although if the factfinder determines that the liable person:

- (1) furnished the state officials with all information known to the person not later than 30 days after obtaining the information;
- (2) fully cooperated with the investigation of their own violation;
- (3) had no knowledge of an investigation, criminal prosecution, civil action, or administrative action concerning their violation at the time they provided the information to the state official;

then the violator is liable for not less than two times the amount of damages that the state sustained because of the violation and for the costs to the AG or IG in bringing the action.

These penalty provisions will result in an indeterminable increase in revenue to the state. The amount of revenue ultimately depends upon the number of successful actions and the size of the damages and fines imposed.

The revenue from these penalties could also be reduced by persons entitled to a percentage of the award through the whistleblower protection provisions. The revenue collected from these penalties will be deposited in the state General Fund.

Whistleblower Protection: The person who initially files the complaint is entitled to reasonable attorneys' fees and costs plus the following amounts if the state prevails in the action:

- (1) If the AG or IG intervened in the action, then the person is entitled to 15% to 25% of the proceeds.
- (2) The person is entitled to receive no more than 10% of the proceeds if the AG or IG intervened, but the court finds that the evidence used to prosecute was contained in:
 - (a) a transcript of a criminal, civil, or administrative hearing;
 - (b) a legislative, an administrative, or another public report, hearing, audit, or investigation;
 - or
 - (c) a news media report.
- (3) The person is entitled to 25% to 30% of the proceeds if the AG and IG *did not* intervene.

If the person who initially filed is a violator of the *false claims* provisions from above or has previously been convicted for a false claim against the state, then the person is not entitled to any of the proceeds.

These provisions of the bill will impact state revenues to the extent that the person filing the action is entitled

to a percentage of the proceeds.

Court Fee Revenue: If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: *Reporting a Violation:* Local expenditures could increase if offenders are incarcerated in local jails instead of being only fined. A Class A misdemeanor is punishable by up to one year in jail. The average daily cost of housing an offender in jail is reported to be \$44. There is no term of imprisonment for an infraction.

Explanation of Local Revenues: *Reporting a Violation:* Local governments could receive additional revenues from any court fees that are collected for cases that were infractions and are now misdemeanors. Twenty-seven percent of court fees that are collected are deposited in the county general fund when a guilty verdict is entered for a misdemeanor. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. From city and town courts, the county general fund receives 20% of the court fee, while the city or town general fund receives 25%.

Court Fee Revenue: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees.

State Agencies Affected: Departments of Correction; Attorney General.

Local Agencies Affected: Trial courts; local law enforcement agencies

Information Sources: Indiana Sheriffs' Association.

Fiscal Analyst: Adam Brown, 317-232-9854.